

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF VENTURA  
VENTURA DIVISION**

**TENTATIVE RULINGS**

EVENT DATE: 08/14/2018  
JUDICIAL OFFICER: Kevin DeNoce

EVENT TIME: 08:20:00 AM

DEPT.: 43

CASE NUM: 56-2017-00504174-CU-BT-VTA  
CASE TITLE: AYALA VS ALEXANDER BUICK GMC

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Business Tort

EVENT TYPE: Motion to Strike  
CAUSAL DOCUMENT/DATE FILED: Motion to Strike, 07/06/2018

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This case has been assigned to Judge DeNoce for all purposes. The morning calendar before Judge Kevin G. DeNoce will begin at 9 a.m. in courtroom 43. Cases including *ex parte* matters will not be called prior to 9 a.m. Please check in with the courtroom clerk by no later than 8:45 a.m. If appearing by Court Call, please call in between 8:35 and 8:45 a.m.

If you wish to submit on the court's tentative decision, please send an email to the court at: Courtroom43@ventura.courts.ca.gov stating that you submit on the tentative, and copy all counsel/parties on your email. Do not call in lieu of sending an email. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence.

Absent waiver of notice and in the event an order is not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

For general information regarding Judge DeNoce and his courtroom rules and procedures, please visit: <http://www.denoce.com>

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**The court's tentative ruling is as follows:**

The court intends to place off calendar Defendant R&A Alexander Investments LLC's request for an order striking the allegations supporting and prayer for attorney's fees in Plaintiff Salvador Ayala's 1st Amended Complaint, on the ground that this request is temporarily mooted by the tentative ruling sustaining Defendant's demurrer to the fifth cause of action with leave to amend.

The court intends to grant, with leave to amend, Defendant's request for an order striking Plaintiff's allegations supporting and prayer for punitive damages, solely on the ground that Plaintiff fails to allege facts satisfying the requirements in Civil Code §3294(b) for seeking punitive damages against an employer. Alexander is correct that Plaintiff fails to allege facts satisfying the requirements for holding an entity liable in punitive damages for the acts of its employees. Specifically, Civil Code §3294(b) provides that:

*"An employer shall not be liable for damages pursuant to subdivision (a), based upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on*

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the part of an officer, director, or managing agent of the corporation."

Here, Plaintiff fails to allege facts indicating that the allegedly malicious acts were committed/authorized/ratified by an officer/director/managing agent of Alexander, and therefore fails to satisfy the requirements of §3294(b). In his Opposition Brief, Plaintiff requests that the Court "take judicial notice of common knowledge of industry practices where all final car sales are approved by managers working at car dealerships." (See Opposition Brief, 4:4-6.) The Court denies this request on the grounds, *inter alia*, this statement is (a) not necessarily true; and (b) even if true, would not necessarily establish that a managing agent of Alexander authorized or ratified the alleged fraudulent conduct.

The court intends to deny Defendant's request for an order striking Plaintiff's fifth cause of action. The request to strike this claim appears to be a re-litigation of the demurrer. These arguments are more appropriately addressed in the context of the demurrer, and have been so addressed.